

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CLAYTON ROUECHE,

Defendant.

NO. CR07-344RSL

DECLARATION OF TODD MAYBROWN
IN SUPPORT OF MOTION TO STRIKE
DECLARATION OF DANIEL LeCLERC

I, Todd Maybrown, do hereby declare:

1. I am an attorney admitted to practice in this court. I am counsel of record for defendant Clayton Roueche in the above-entitled case.

2. On April 28, 2009, Mr. Roueche entered a guilty plea to Counts 1, 3 and 5 of the Government's Superseding Indictment. See Dkt. # 257. Sentencing is currently scheduled for December 16, 2009 at 1:30 P.M.

3. On or about October 27, 2009, the Government submitted several pleadings to this Court. These pleadings include declarations from several informant witnesses, including a declaration from a person named Daniel LeClerc.

4. Daniel LeClerc is currently in federal prison serving a ten-year sentence on account of his criminal conduct. Mr. LeClerc has already obtained a departure/variance for

*DECLARATION OF TODD MAYBROWN IN
SUPPORT OF MOTION TO STRIKE DECLARATION - 1
CR07-344RSL*

Allen, Hansen & Maybrown, P.S.
600 University Street, Suite 3020
Seattle, Washington 98101
(206) 447-9681

1 his "cooperation" with the case. Nevertheless, in submitting this new declaration, he is
2 hoping to obtain an additional reduction of his sentence pursuant to Fed. R. Crim. P. 35(b).

3 5. I have informed the Government and Mr. LeClerc's attorney, Jon Zulauf, of
4 my concern that this witness has made false claims in his submission to the Court. In
5 particular, I have noted my belief that Mr. LeClerc has lied when he claims that he was
6 intimidated, pressured or threatened by Clay Roueche. *See, e.g.*, LeClerc Dec. ¶¶ 10, 18, 37,
7 41.¹

9 6. In fact, it is my belief and understanding that Mr. LeClerc engaged in all of this
10 conduct of his own free will. Mr. LeClerc was not a reluctant participant in this activity and
11 he was never threatened by Mr. Roueche in any way. To the contrary, Mr. LeClerc was
12 always a willing, if not enthusiastic, participant in this activity. It is also my belief that Mr.
13 LeClerc has manufactured these claims against Mr. Roueche in an attempt to justify his own
14 conduct and to bolster his present claim for a reduction of sentence under Rule 35(b).

16 7. After reviewing the LeClerc declaration, I contacted Jon Zulauf and requested
17 an opportunity to meet with his client to discuss these matters. Mr. Zulauf subsequently
18 informed me that Mr. LeClerc would not agree to meet with me to discuss any of these
19 matters.

21 8. Thereafter, I contacted AUSA Susan Roe to determine if the Government
22 might be able to facilitate a meeting between myself and Mr. LeClerc. Ms. Roe indicated that
23 she could not assist in arranging a meeting with Mr. LeClerc prior to the sentencing.

25 ¹ The Declaration includes a numerical anomaly. Mr. LeClerc signed the final page of the document
26 (number 11) which includes a "Verification" at Paragraph 40. The remainder of the declaration
includes a total of 41 numbered paragraphs. I assume this anomaly must be some sort of
typographical error or discrepancy in the final document.

1 9. The Government has indicated that it cannot force Mr. LeClerc to speak with
2 defense counsel. While I understand this position, the Government certainly could have
3 notified Mr. LeClerc that the decision whether or not to file a Rule 35 motion might be
4 impacted by his refusal to cooperate with defense counsel.
5

6 10. In light of all of these circumstances, I ask the Court to strike the Declaration
7 of Daniel LeClerc. Mr. LeClerc's declaration is highly unreliable – perhaps the most
8 unreliable type of hearsay that could be presented to this Court. *See, e.g., Bruton v. United*
9 *States*, 391 U.S. 123 (1968); *Whelchel v. Washington*, 232 F.3d 1197, 1207-8 (9th Cir. 2000).
10 As was explained by the Supreme Court in *Lee v. Illinois*, 476 U.S. 530 (1986):
11

12 [A] codefendant's confession is presumptively unreliable as to the passages
13 detailing the defendant's conduct or culpability because those passages may
14 well be the product of the codefendant's desire to shift or spread blame, curry
15 favor, avenge himself, or divert attention to another.

16 *Id.* at 545.

17 11. In fact, this is the type of untested and unreliable hearsay that should not be
18 permitted at any sentencing proceeding. *See, e.g., United States v. Petty*, 982 F.2d 1365, 1369
19 (9th Cir. 1993), *as amended by* 992 F.2d 1015 (9th Cir. 1993), *cert denied*, 510 U.S. 1040
20 (1994); *United States v. Ponce*, 51 F.3d 820, 828 (9th Cir. 1995) ("While hearsay statements
21 may be considered at sentencing, due process requires that such statements be corroborated by
22 extrinsic evidence.").

23 12. The LeClerc declaration also includes allegations that he was contacted and
24 perhaps threatened by other persons, including an attorney who practices in the State of
25 California. *See* LeClerc Dec. ¶ 41. After reviewing this information, I contacted the attorney
26 in California in an attempt to verify – or refute – Mr. LeClerc's allegations. That attorney

1 informed me that he would not be able to discuss these issues with me unless it was clear that
2 Mr. LeClerc had waived his attorney-client privilege as to these same matters. The attorney
3 also asked for an opportunity to review the witness' declaration and, to facilitate this process,
4 he has stated that he would agree to abide by any protective order that may be imposed by the
5 Court.
6

7
8 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF
9 WASHINGTON THAT THE FOREGOING IS TRUE AND ACCURATE TO THE BEST
10 OF MY KNOWLEDGE.

11 DATED this 3rd day of December, 2009.

12 Allen, Hansen & Maybrown
13 Attorneys for Defendant

14 

15 TODD MAYBROWN, WSBA #18557
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2009, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the attorneys of record for the Government and the defendants.

/s/ Todd Maybrown
Todd Maybrown, Esq.
Allen, Hansen & Maybrown, P.S.
600 University St., #3020
Seattle, WA 98101
(206) 447-9681
todd@ahmlawyers.com